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IN THE  
**Supreme Court of the United States**

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October Term, 1982

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GERALD J. LANDSBERGER,

*Petitioner,*

vs.

COMMISSIONER OF REVENUE,  
STATE OF MINNESOTA,

*Respondent.*

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ON PETITION FOR A WRIT OF CERTIORARI TO THE  
SUPREME COURT OF THE STATE OF MINNESOTA

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**RESPONDENT'S BRIEF  
IN OPPOSITION**

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## QUESTIONS PRESENTED

1. Whether under Minnesota law the personal income earned during 1979 by Petitioner as an employee of Burlington Northern Railroad is subject to Minnesota's state income tax, notwithstanding Petitioner's claim that he had contractually assigned his personal services, and the income derived therefrom, to a third party called Professional & Technical Services.

2. Whether under Minnesota law Petitioner is entitled to an itemized deduction on his Minnesota state income tax return for "Advisors fees", which were in fact connected with his tax avoidance scheme.

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The Respondent, Commissioner of Revenue for the State of Minnesota, respectfully requests that this Court deny the petition for writ of certiorari, seeking review of the Minnesota Supreme Court's decision in this case. That decision is an unreported Order of the Minnesota Supreme Court dated November 10, 1982, affirming the decision of the Minnesota Tax Court in favor of Respondent Commissioner. It can be found in the Appendix at B(1).

## JURISDICTION

Petitioner is attempting to invoke the jurisdiction of this Court under 28 U.S.C. § 1257 (Pet. for Writ, p. 4),<sup>1</sup> but has failed to specify the exact paragraph of that statute which he relies upon. We assume it is paragraph (3), since this is a petition for writ of certiorari. If so, then it is clear that no jurisdiction lies for any of the Questions Presented by Petitioner. (Pet. for Writ, p. 1). Not one of Petitioner's four Questions Presented sets forth an issue:

"[W]here the validity of a treaty or statute of the United States is drawn in question or where the validity of a state statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States."

28 U.S.C. § 1257(3).

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<sup>1</sup> Throughout this brief the abbreviation "Pet. for Writ" stands for the Petition for a Writ of Certiorari to the Supreme Court of the State of Minnesota herein. The abbreviation "A. —" is a reference to the Appendix filed with the Petition. The abbreviation "Finding No. —" is a reference to the Minnesota Tax Court's Findings of Fact which are printed in the Appendix (A. 2 - A. 6).

## STATEMENT OF THE CASE

This is a Minnesota state income tax case which presents a question of purely state law, to wit: whether an individual taxpayer can totally avoid Minnesota income tax through the simple device of entering into a "personal services contract" which allegedly assigns all his personal services, and the income derived therefrom, to a foreign "trust". The tax year involved is 1979.

The taxpayer and Petitioner herein, Gerald Landsberger, was employed as an accountant with the Burlington Northern Railroad throughout the year 1979, earning a total of \$25,027.72 in compensation for that year. Finding No. 2. (A. 2). On May 27, 1979, Petitioner signed a "personal services contract" with a trust called Professional and Technical Services ("P&TS"), which contract indicated that it was an assignment of Petitioner's personal services to the trust. Finding No. 3. (A. 2—A. 3). However, Burlington Northern had no knowledge of this "personal services contract", Finding No. 4 (A. 3), and the trial court expressly found that Petitioner remained an employee of Burlington Northern throughout 1979. Findings No. 2, 4 and 13. (A. 2; A. 3; and A. 5).

After signing his contract, Petitioner began endorsing his Burlington Northern paychecks over to an organization called IDI (supposedly on orders from P&TS), but almost immediately received back 95% of the amount of each paycheck from an affiliated entity called IDI Credit Union, which receipt Petitioner characterized as a gift from a charity. Findings No. 5 and 6. (A. 3—A. 4). The trial court below noted in its memorandum that there was no real distinction between P&TS, IDI and IDI Credit Union, but in fact all these "organizations" were merely parts of one tax evasion scheme. (A. 12).

On his 1979 state income tax return Petitioner subtracted from his taxable gross income the amounts of his paychecks he had signed over to IDI. Finding No. 7. (A. 4). He also took an unsubstantiated deduction of \$445.00 for what he called "advisors fees for advice on investing assets/property". Findings No. 8 and 15. (A. 4; A. 5). These actions resulted in a claimed tax liability of zero. Finding No. 9. (A. 4).

Upon audit of this return, the Minnesota Commissioner of Revenue disallowed the Petitioner's subtractions and deductions, and then calculated the correct tax due resulting in a Commissioner's Order dated May 22, 1981, assessing an income tax liability of \$918.00, including interest to the date of the Order. Findings No. 11 and 12. (A. 5). Petitioner appealed from this Order to the Minnesota Tax Court and trial was held on February 16, 1982, Judge Carl A. Jensen presiding. On June 11, 1982, the Minnesota Tax Court issued its decision affirming the Order of the Commissioner in all respects. (A. 6). Petitioner took a further appeal by certiorari to the Minnesota Supreme Court. On November 10, 1982, the Minnesota Supreme Court issued its Order affirming the decision of the Minnesota Tax Court. (A. at B(1)).

It is worth noting that in the first sentence of its memorandum opinion the Minnesota Tax Court stated: "This is about as raw an attempt to evade and avoid taxes as has come to the attention of this Court". (A. 6). Moreover, Petitioner Landsberger is not only a participant in this scheme, but is also one of the scheme's promoters. Finding No. 6. (A. 3—A. 4). In fact, the Internal Revenue Service recently sought and obtained a permanent injunction against the continued marketing and operation of this scheme by the Petitioner, due to the scheme's patent illegality. See *United States v. Landsberger*, — F.2d —, 50 AFTR2d 82-5445 (8th Cir., 1982); affirming 534 F.Supp. 142 (D. Minn., 1981).



## REASONS FOR DENYING THE WRIT

### I. THERE IS NO SUBSTANTIAL FEDERAL QUESTION PRESENTED IN THIS CASE.

It is axiomatic that before this Court can obtain jurisdiction under any part of 28 U.S.C. § 1257, there has to have been a substantial federal question raised, litigated and decided in the state court proceedings. *See Zucht v. King*, 260 U.S. 174 (1922). *See also Palmer Oil Corp. v. Amerada Corp.*, 343 U.S. 390 (1952).

In the present case, the issues raised are neither substantial nor federal in character. No matter which view one takes of the Questions Presented,<sup>2</sup> the fact remains that this lawsuit was manifestly correctly decided by the Minnesota Supreme Court on purely a question of state law. It thus does not warrant review by this Court on certiorari.

None of the Petitioner's Questions Presented (Pet. for Writ, p. 1), are framed in terms of a federal statutory or constitutional issue. In fact, on the cover of his petition Landsberger clearly states that he is basing his petition:

"[U]pon the grounds that said [Minnesota Supreme Court] decision is not in conformity with the tax laws of the State of Minnesota and is unwarranted by the evidence."

Obviously, the Minnesota Supreme Court has the sole power to determine what is in conformity with the tax laws of Minnesota. And if Petitioner is serious in his assertion that the decision below should be reviewed because it is unwarranted by the evidence, then the writ should be denied because it has long

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<sup>2</sup> Both the Petitioner and Respondent have submitted different versions of the real Questions Presented in this case.

been established that this Court will not review the decision of a state court upon a question of fact that is supported by substantial evidence. *General Motors Corp. v. Washington*, 377 U.S. 436, 441-442 (1964); *Fry Roofing Co. v. Wood*, 344 U.S. 157, 160 (1952); *Grayson v. Harris*, 267 U.S. 352, 357-358 (1925); *Pure Oil Co. v. Minnesota*, 248 U.S. 158, 164 (1918). The Minnesota Tax Court's detailed Findings of Fact (A. 2—A. 6) were clearly supported by the record, and the Minnesota Supreme Court did not disturb those findings on review.

In addition to the above, Petitioner has made no assertion that his case (involving only his own personal Minnesota income tax liability for the year 1979) is in any way of general importance beyond the particular facts of his situation. He has failed to cite any actual or potential conflicts of decision between the Minnesota Supreme Court and other courts in the land. Nor is there any conflict among United States Circuit Courts of Appeal on this question. Accordingly, it is quite clear that Petitioner's Questions Presented are not substantial enough for this Court's attention.

Nor is there any real federal question involved. There was certainly no specific federal constitutional claim made by Petitioner in either the Minnesota Tax Court or the Minnesota Supreme Court below, as attested to by the fact that neither state court addressed any such constitutional questions in their decisions. As this Court has stated many times, the failure of the highest state court to pass upon a federal question raises the presumption that no such federal question was properly presented in the state courts. *Fuller v. Oregon*, 417 U.S. 40, 50, n. 11 (1974); *Street v. New York*, 394 U.S. 576, 582 (1969).

Petitioner's sole reference to any part of the federal constitution is on pp. 4 and 11 of his Pet. for Writ, where he claims

that the actions of the courts below somehow result in an impairment of his personal services contract. But, of course, no such thing ever occurred. In fact, the Minnesota Tax Court expressly stated that it did not have to concern itself with the validity and enforceability of the contract as between Landsberger and P&TS. (A. 7). The courts below simply ruled, under settled tax principles first established by this Court in *Lucas v. Earl*, 281 U.S. 111 (1930),<sup>3</sup> that Petitioner's contract, whether valid or not, did not absolve him from income tax liability on his compensation earned as an employee of Burlington Northern. As this Court said in *Lucas v. Earl*:

The validity of the contract is not questioned, and we assume it to be unquestionable under the law of the State of California, in which the parties lived. *Nevertheless we are of opinion that the Commissioner and Board of Tax Appeals were right.* (Emphasis added.)

281 U.S. at 114.

Thus, there simply does not exist an impairment of contract clause question in this case. *See also Barwise v. Sheppard*, 299 U.S. 33, 40 (1936) [all contracts are made in subordination to the state's power of taxation].

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<sup>3</sup> Which principles were adopted for Minnesota income tax purposes in *Drew v. Commissioner of Taxation*, 222 Minn. 186, 23 N.W.2d 565 (1946).

## II. THE ISSUE IN THIS CASE IS PURELY A QUESTION OF STATE LAW.

The only real questions in this case are whether, under Minnesota's state income tax law, the Petitioner and his income were subject to Minnesota income tax, and whether Petitioner is entitled to a certain itemized deduction under Minn. Stat. § 290.09, subd. 2(b) (2).

Both of these questions were purely state law issues. Although some reference was made in the trial court's decision to federal cases, it is clear that this was solely due to the similarity between Minnesota's income tax law and the federal income tax law. A simple reading of the trial court's decision (A. 1—A. 22) is sufficient to establish that there were ample state law grounds upon which to base the decisions below.

We need not elaborate on what the Minnesota Tax Court has already said and the state Supreme Court has affirmed. It is clear that this suit is purely and simply a question of state income tax law, upon which the Minnesota Supreme Court has the last word. No federal question of a substantial nature has been presented or decided. Indeed, Petitioner's entire case is so insubstantial and devoid of merit as to be frivolous. Accordingly, this Court should deny review.

## CONCLUSION

For these reasons, this petition for writ of certiorari should be denied.

Respectfully submitted,

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